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In The

Supreme Court of the United States

October Term, 1994

AGRICULTURAL LABOR RELATIONS BOARD, J. ANTONIO BARBOSA, IVONNE RAMOS RICHARDSON, and LINDA A. FRICK,

Petitioners,

v.

BUD ANTLE, INC., d/b/a BUD OF CALIFORNIA,

Respondent.

On Petition for a Writ of Certiorari
To The Ninth Circuit Court of Appeals

BRIEF OF AMICI CURIAE STATES OF MONTANA, HAWAII, IDAHO, KANSAS, MARYLAND, NEBRASKA, NEVADA, NEW MEXICO, PENNSYLVANIA, SOUTH DAKOTA, VIRGINIA, AND UTAH IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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BRIEF OF AMICI CURIAE IN SUPPORT OF PETITION

The amici curiae States of Montana, Hawaii, Idaho, Kansas, Maryland, Nebraska, Nevada, New Mexico, Pennsylvania, South Dakota, Utah and Virginia, through their respective Attorneys General, respectfully submit a brief pursuant to S. Ct. R. 37.2 in support of the petition for a writ of certiorari.

INTEREST OF AMICI

This Court has long been concerned with the proper allocation of judicial power between state and federal courts. A cornerstone of the modern conception of judicial federalism is the rule established in *Younger v. Harris*, 401 U.S. 37 (1971), where the Court explained that "the normal thing to do when federal courts are asked to enjoin pending proceedings in state courts is not to issue such injunctions." *Id.* at 45. This principle is based in concepts of equity and is

> reinforced by an even more vital consideration, the notion of "comity," that is, a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways.

Id. at 44. In *Ohio Civil Rights Comm'n v. Dayton Christian Sch.*, 477 U.S. 619, 627-28 (1986), this Court affirmed that these same principles apply to state administrative proceedings that are "judicial in nature."

Each amici state is a partner in the federal union and a sovereign in its own right. Each has a variety of administrative agencies which make adjudicatory decisions subject to review in state court and, where federal questions are involved, in this Court. These adjudicatory processes exist to vindicate both state and federal interests and are as capable of protecting the latter as they are the former. The amici are interested in maintaining the integrity of their adjudicatory processes for two main reasons: The first is assuring an environment conducive to the responsible and informed evolution of state laws and policies, and the second is assuring that those processes remain adequate to the task of protecting their citizens' federal, as well as state, rights and interests. Routine federal interference in state adjudicatory proceedings undermines these interests.

The decision below represents an unprincipled intrusion by the federal judiciary into an ongoing state adjudicatory proceeding. If left to stand, the rationale employed by the Court of Appeals to justify that intrusion threatens to undermine the delicate balance of state-federal judicial relations and frustrate this Court's efforts to maintain the integrity of our federal judicial structure.

SUMMARY OF ARGUMENT

The Court of Appeals committed two errors in considering the propriety of abstaining under *Younger v. Harris*, 401 U.S. 39 (1971). The first was considering the federal plaintiff's claim of a competing federal interest in conjunction with the "state interest" prong of the three-part *Younger* test. In *New Orleans Pub. Serv., Inc. v. Council of the City of New Orleans*, 491 U.S. 350 (1989), this Court held that the important state interest inquiry focused on the importance of the generic proceeding to the state and did not

consider possibly countervailing federal interests in the outcome of the particular proceeding.

The Court of Appeals' second error was concluding that a "readily apparent" claim of federal preemption sufficed to except the case from *Younger* without a showing that the federal plaintiff lacked adequate remedies under state law. The Court has repeatedly held that the simple fact a state statute or proceeding may be unconstitutional does not except a case from *Younger* unless an additional showing of irreparable injury is made, which usually involves a showing that the state courts are not adequate to remedy the constitutional defect. This same principle should apply when it is argued that the subject state statute or proceeding is preempted by federal law.

If the Court of Appeals' approach is accepted, essentially every preemption claim will be captured by this exception. In that event, federal courts will be obligated to engage in highly speculative, essentially standardless inquiries as to whether any given preemption argument is sufficiently strong to warrant the exception's application. The exception identified by the Court of Appeals thus promises to swallow the rule.

ARGUMENT

THE COURT OF APPEALS' DECISION PRESENTS THIS COURT WITH AN OPPORTUNITY TO CLARIFY THE APPLICATION OF THE *YOUNGER V. HARRIS* ABSTENTION DOCTRINE IN CASES INVOLVING CLAIMS OF FEDERAL PREEMPTION AND TO REAFFIRM THE IMPORTANT PRINCIPLES OF FEDERALISM UPON WHICH IT RESTS.

It is by now well established that a federal court should decline jurisdiction when it has been asked to take action that

threatens to interfere with (1) an ongoing state proceeding, (2) involving an important state interest, and (3) in which there is an adequate opportunity to raise the involved federal question. *Ohio Civil Rights Comm'n v. Dayton Christian Sch.*, 477 U.S. 619, 627 (1986); *Middlesex Co. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982). If these elements are present, the federal court may still exercise jurisdiction if there are "extraordinary circumstances," such as a state law that "is flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort may be made to apply it." *Younger*, 401 U.S. at 54-55, *quoting Watson v. Buck*, 313 U.S. 387 (1941). As the decision below suggests, the application of these seemingly clear principles remains unpredictable and inconsistent.

While having its own procedural complexities, the case below arose like many others under *Younger*. Respondent Bud Antle, Inc. ["Bud"] found itself defending against charges of unfair labor practices filed by a number of its employees before a state administrative agency--Petitioner California Agricultural Labor Relations Board ["ALRB"]. In those proceedings Bud contended that the ALRB's jurisdiction to adjudicate the involved charges was preempted by the National Labor Relations Act. *See* 29 U.S.C. § 152(3). Bud asked for and received an interlocutory ruling from the ALRB on that issue.[1] Unhappy with that ruling, and before exhausting all of the remedies available to it before the ALRB and in the California state courts, Bud filed an action in federal district court. This factual scenario is not unique and, as the district court recognized, fits foursquare into the *Younger* model. App. at 50; *see, e.g.*, *Dayton Christian Sch.*, 477 U.S. at 627; *Fresh*

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[1]Bud also asked the National Labor Relations board ["NLRB"] to address this issue. The NLRB's ruling, however, did not address the specific question at issue in the ALRB proceedings: the status of Bud's cooler employees in 1989. (App. at 9.)

Int'l Corp. v. Agricultural Labor Relations Bd., 805 F.2d 1353 (9th Cir. 1986).

The Court of Appeals conceded the applicability of the first and third *Younger* prongs and, as to the second, concluded that a "readily apparent" claim of preemption was sufficient to defeat a finding of an "important state interest." (App. at 25.) After framing the issue in that manner, the Court of Appeals found that preemption of the ALRB's decision under *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236 (1959), was "readily apparent," and reversed the district court's *Younger* dismissal, holding that "the ongoing state proceedings do not implicate any important state interest because the NLRA clearly preempts the state board's jurisdiction. (App. at 25.) The Court of Appeals, in sum, collapsed its decision as to whether *Younger* abstention was proper into its determination of the preemption claim's merits.

New Orleans Pub. Serv., Inc. v. Council of the City of New Orleans, 491 U.S. 350 (1989) ["NOPSI"] makes clear that the Court of Appeals abstention analysis was wrong in two respects. The first was in considering the claim of federal preemption in conjunction with the "state interest" prong, and the second was creating out of whole cloth a new "readily apparent" preemption exception to *Younger* abstention.

In *NOPSI* the Court addressed whether *Younger* abstention was warranted in deference to an ongoing state ratemaking proceeding. While ultimately holding it was not,[2] the Court first analyzed whether the proceedings at issue involved an "important state interest." As in the instant case, the underlying dispute in *NOPSI* involved the question of

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[2]The *NOPSI* Court held that abstention under *Younger* was inappropriate because the underlying administrative rulemaking proceeding was not "judicial in nature" (491 U.S. at 370)--a question not at issue here.

whether the involved state regulatory scheme was preempted by federal law. In seeking to avoid abstention, the *NOPSI* petitioner argued that:

> *Younger* cannot bar a federal court adjudication when, as here, the federal claim is that the state's jurisdiction to conduct the proceeding is ousted by federal law and that the state, therefore, may have no "legitimate" or "important" substantive interest.

Pet'r Br. at 32, *NOPSI* (No. 88-348); *see also* United States Br. at 22, *supra*. The Court's response was unequivocal:

> We disagree. There is no greater federal interest in enforcing the supremacy of federal statutes than in enforcing the supremacy of explicit constitutional guarantees, and constitutional challenges to state action, no less than preemption-based challenges, call into question the legitimacy of the State's interest in its proceedings reviewing or enforcing that action.

NOPSI, 491 U.S. at 365. The Court went on to explain:

> [W]hen we inquire into the substantiality of the State's interests in its proceedings we do not look narrowly to its interest in the *outcome* of the particular case--which could arguably be offset by a substantial federal interest in the opposite outcome. Rather, what we look to is the importance of the generic proceedings to the State.

Id. The same error occurred below. Bud's argument in this case is not that the California Agricultural Labor Relations Act (Cal. Labor Code §§ 1140 to 1166) is unimportant or entirely

preempted by federal law, but rather that a specific decision of the ALRB interpreting that law is erroneous and encroaches on a matter governed exclusively by the NLRA. The Court of Appeals likewise employed "too narrow an analytical focus" (*NOPSI*, 491 U.S. at 366) when it measured the substantiality of California's interest by focusing on the outcome of this specific case rather than its admitted "important state interest in protecting the collective bargaining right of agricultural laborers." (App. at 25.)[3]

Nor did the Court of Appeals consider the other "important state interest" affected by its ruling: California's interest in preserving the integrity of its administrative judicial review process. In *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1 (1987), the Court emphasized that it has "repeatedly . . . recognized that the States have important interests in administering certain aspects of their judicial systems." 481 U.S. at 12-13. The logical implication of this Court's decisions extending *Younger* to state administrative proceedings and requiring federal plaintiffs to exhaust available state appellate remedies is that a state's administrative judicial review process is one of those aspects. *See Dayton Christian Sch.*, 477 U.S. at 627; *Middlesex*, 457 U.S. at 434-35; *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 609-10 (1975). Allowing state agency litigants to "jump ship" prior to exhausting their state

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[3]The error rested in the Court of Appeals' reliance on several pre-*NOPSI* decisions that did not recognize the analytical distinction drawn in that case and which treated the preemption claim as simply part of the "important state interest" inquiry: *Fresh Int'l Corp.*, 805 F.2d at 1361, n.11; *Champion Int'l Corp. v. Brown*, 731 F.2d 1406 (9th Cir. 1984); and *Baggett v. Department of Professional Reg. Bd. of Pilot Comm'rs*, 717 F.2d 521 (11th Cir. 1983). The only post-*NOPSI* decision cited by the Court of Appeals, *Gartrell Constr. Inc. v. Aubry*, 940 F.2d 437 (9th Cir. 1991), likewise did not discuss *NOPSI* in relation to this question.

appellate remedies will eviscerate state judicial review processes and affect the functioning of state administrative law.

Even though the Court of Appeals did not address Bud's preemption claim in the context of *Younger*'s "exceptional circumstances" or "flagrantly and patently violative" exceptions, the question remains whether the decision below can be squared with them. It cannot. First of all, the Court of Appeals' "readily apparent" standard lacks any textual support in this Court's decisions and falls short of the high threshold this Court has set for the *Younger* exceptions. More importantly, however, and irrespective of the correctness of its preemption determination, the Court of Appeals did not take the next logical--and required--step of explaining why the California state courts are not up to the task of rectifying this problem. *Younger*'s exceptions are simply an aspect of its equitable roots, and equitable relief will not be accorded unless a plaintiff can show the likelihood of irreparable injury in its absence. *NOPSI*, 491 U.S. at 366; *Huffman*, 420 U.S. at 602; *Younger*, 401 U.S. at 54-55. This Court has on many occasions been invited to except cases from *Younger* on the grounds of constitutional invalidity, and has declined because of the presence of adequate state remedies. *See NOPSI*, 491 U.S. at 367; *Moore v. Sims*, 442 U.S. 415, 433 (1979); *Trainor v. Hernandez*, 431 U.S. 439, 447-48 (1977); *Juidice v. Vail*, 430 U.S. 327, 338 (1977); *Kugler v. Helfant*, 421 U.S. 117, 125-27 (1975). In this case Bud has adequate remedies before the ALRB and in the California state courts to litigate its preemption claim, and requiring it to do so hardly constitutes the type of harm that equity will intervene to protect. *E.g.*, *Trainor*, 431 U.S. at 443; *Huffman*, 420 U.S. at 602-03; *Younger*, 401 U.S. at 47.

Aside from the analytical flaws in the Court of Appeals' approach, there are important practical--and untoward--consequences from the decision below. *Younger* abstention flows from this Court's efforts to maintain the

integrity of our federal judicial structure. Paramount to that effort is preserving the integrity of state courts "to perform the separate function of providing a forum competent to vindicate any constitutional objection interposed against [state] policies." *Huffman*, 420 U.S. at 605; *see also Steffel v. Thompson*, 415 U.S. 452, 461-62 (1974). The Court of Appeals decision has denied the California state courts an opportunity to provide a "narrowing construction[] [of the ALRB order] that might obviate the constitutional problem and intelligently mediate federal constitutional concerns and state interests." *Moore*, 442 U.S. at 429-30; *see also Pennzoil*, 481 U.S. at 13; *Trainor*, 431 U.S. at 446.

Furthermore, without a final determination by the California state courts on the application of the ALRA, a decision by a federal court on the preemption question is premature, for,

> [w]hen federal courts interpret state statutes in a way that raises federal constitutional questions, "a constitutional determination is predicated upon a reading of the statute that is not binding on state courts and may be discredited at any time--thus essentially rendering the federal court decision advisory and the litigation underlying it meaningless."

Pennzoil, 481 U.S. at 12, *quoting Moore*, 442 U.S. at 428. The Court of Appeals' decision, at bottom, manifests a profound distrust of state courts' ability to adjudicate federal issues fairly--a mistrust which has resulted in an unseemly and unnecessary disruption of otherwise orderly administrative proceedings.

This case thus warrants review so the Court can clarify (1) that the determination of an "important state interest" under *Younger* does not involve a weighing or consideration of arguably competing federal interests, and (2) that a claim of

federal preemption, unaccompanied by a demonstration of why state remedies are inadequate, is insufficient to except the case from the operation of *Younger*. Given a growing inconsistency in the application of *Younger* by the lower courts, this case also presents the Court with an opportunity to reaffirm the principles of equity, comity, and federalism that underlie the *Younger* doctrine.[4]

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[4]The amici states are concerned that the Court of Appeals' rationale is not confined to state administrative proceedings and, as several recent decisions in the ninth and tenth circuits demonstrate, seems to be gaining currency. For example, in *Sycuan Band of Mission Indians v. Roache*, 38 F.3d 402 (9th Cir. 1994), the Court of Appeals refused to abstain in deference to an ongoing state criminal prosecution of several Sycuan tribal members for violating state gaming laws because "the threshold issue of the State [of California's] jurisdiction to prosecute is a matter of federal, not state, law." *Id.* at 409. Relying on *Sycuan Band*, the Court of Appeals in *Fort Belknap Indian Community v. Mazurek*, 43 F.3d 428 (9th Cir. 1994), *pet. for writ of cert. pending*, No. 94-1728, again refused to abstain in favor of an ongoing state criminal prosecution, explaining that "[b]ecause the jurisdictional question is paramount and federal, *Younger* abstention would not be appropriate here." 43 F.3d at 432; *see also Confederated Salish & Kootenai Tribes v. Simonich*, 29 F.3d 1398 (9th Cir. 1994); *Seneca-Cayuga Tribe v. State ex rel. Thompson*, 874 F.2d 709 (10th Cir. 1989).

CONCLUSION

The amici States respectfully urge this Court to grant the petition for writ of certiorari.

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